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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,196	02/15/2002	Matti Huiku	50003-00002	9506

25231 7590 07/28/2004

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EXAMINER

KREMER, MATTHEW J

ART UNIT PAPER NUMBER

3736

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 10/077,196	<b>Applicant(s)</b> HUIKU, MATTI	
	<b>Examiner</b> Matthew J Kremer	<b>Art Unit</b> 3736	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 24 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: 1-23.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 24-31.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
**MARY BETH JONES**  
 ACTING SUPERVISORY PATENT EXAMINER

Continuation of 2. NOTE: The Amendment filed on 6/24/2004 will not be entered because it raised new issues that were not considered during examination. Specifically, the Applicant has amended claim 24 to include "first compensation means, operatively connected to the memory means and the detector means, for dynamically determining tissue-induced changes in the nominal characteristics based on said output signals of said detector means", which included additional limitations in claim 24 that were not considered or searched for during the examination process for claim 24. As such, these additional limitations constitute new issues..

Continuation of 5. does NOT place the application in condition for allowance because: the Applicant's arguments were not persuasive. In regard to the Applicant's argument that Huiku nor Oosta provide any suggest or motivation for combining the teachings thereof in the manner asserted by the Examiner, the Examiner respectfully disagrees. The Examiner contends it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the correction procedures of Oosta in the method of Huiku since more accurate measurements can be achieved. This motivation is inferred from the Background of the Invention where Oosta discloses there is no existing method that provides "a procedure whereby the variability of absorbance, reflectance or transmission due to skin parameters on the nonionizing radiation are calibrated and used to correct the measurement of the biologically significant compound" (column 1, lines 23-27 of Oosta) and "there continues to be a need to provide an accurate, efficient, easy-to-use calibration and correction procedure for use in the non-invasive detection of biological compounds." (column 1, lines 46-49 of Oosta). It would be understood by one with ordinary skill in the art that these drawbacks of less accurate measurements are to be corrected by the correction procedures of Oosta. One with ordinary skill in the art would understand that more accurate measurements would be the result since the invention provides a process of calibrating "wherein the contribution of one or more skin parameters to the non-invasive measurement is used to correct the subsequent non-invasive measurement of the biological compound for the contribution of the one or more skin parameters" (column 1, lines 59-64 of Oosta). Indeed, the very nature of using a correction procedure is to obtain more accurate results. As to the Applicant's second argument that the Huiku/Oosta teaches patient specific compensation based upon off-line measurements and does not teach a memory and detector means for dynamically determining tissue-induced changed in nominal characteristic based on output signals of the detector means, the Applicant relies on the Amendment to claim 24, which introduces new issues and would require further search and consideration. Because of the new issues raised by the amendment of claim 24, the Applicant's argument was not considered persuasive..